Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **Sub. S.B. 137** DATE: **June 23, 1999**

STATUS: **As Reported by Senate Highways and Transportation** SPONSOR: **Sen. Oelslager**

LOCAL IMPACT STATEMENT REQUIRED: **No — Permissive**

CONTENTS: **Make various changes in laws governing port authorities**

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Port authorities			
Revenues	Potential increase	Potential increase	Potential increase
Expenditures	Potential increase	Potential increase	Potential increase
Certain municipalities			
Revenues	Potential loss	Potential loss	Potential loss
Expenditures	Potential increase	Potential increase	Potential increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Expansion of bonding authority could lead to additional revenues gained through the collection of administrative fees, additional expenditures in contracted services (bond counsel) and higher annual debt service expenditures for some port authorities.

- Expansion of contract authority to allow a port authority or one or more contracting subdivisions to subsume any power, perform any function, or render any service currently authorized by law could lead to a transfer of functions typically performed by a governmental subdivision, taxing district or port authority. With approval of a majority of voters, a contract agreement may 1) extend the power to levy taxes or eminent domain within and on behalf of any other subdivision to such an agreement, or 2) allow a port authority to execute enterprise zone or community reinvestment area tax abatements. The fiscal impact of this section is currently unknown.

- Reduces outstanding debt for certain port authorities by deleting required compensation of municipal corporations by pre- and post- 1982 port authorities for waterfront investment.

- For port authorities impacted by the change in law for special police officers, costs would increase for peace officer training.

- Requires port authorities to submit an annual report to the Director of Development disclosing the progress and status of all projects and activities.

Detailed Fiscal Analysis

This bill would revise the powers and duties of port authorities, enhance avenues for cooperation among port authorities and other political subdivisions, make other changes in laws governing port authorities, and declare an emergency.

Background

Ohio's port authorities are primarily governed by Section 4582 of the Ohio Revised Code. Through an official act of a municipal corporation, a township, a county or any combination of any of these local governments, a port authority can be created. A board of directors, the size of which is determined by the creating authority or authorities, governs each port authority. Board members are appointed by the local governments responsible for creating the port authority, and serve for a term of four years. Any political subdivision within the jurisdiction of a port authority may appropriate and expend public funds to finance or subsidize the activities of the port authority.

Currently, 24 port authorities are believed to be operating in Ohio (See Attachment 1); the exact number is not known because these entities are creations of local governments. The only state-level oversight of port authorities currently required by law is the receipt of financial audit reports by the Office of the Auditor of State. More informally (and only for the past two years), the Ohio Department of Development has encouraged periodic meetings among port authority managers to discuss economic development opportunities.

A port authority's board of directors must annually approve appropriation measures and subsequent budget amendments. These official actions are of a public nature, yet relatively little oversight of these actions exists. The Ohio Revised Code requires that port authority appropriations cannot exceed estimated resources, and that the county budget commission shall certify the annual estimates of resources. In practice, the commission's certification verifies only the estimates of anticipated property tax receipts, if any, and port authority staff provide the remaining revenue and expenditure estimates. In addition, the local governments responsible for creating a port authority have little or no authority in overseeing the fiscal affairs of that port authority. Thus, each port authority operates separately and independently from other local governments.

Establishing and maintaining a port authority's internal fiscal structure is the day-to-day responsibility of the port authority's management team. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structures, policies and procedures.

OUTLINE OF ISSUES:

- *Expands contract provisions to allow a port authority or one or more contracting subdivisions to subsume any power, perform any function or render any service.*

  While this section is currently being researched, the broad provisions here suggest that, through a contract agreement, a transfer of governmental powers to a port authority, or a transfer of port authority powers to a governmental subdivision, is allowed. It is not clear whether this section would, in the event of a voter approved levy, extend certain taxing powers to areas that typically do not levy certain taxes. This section would permit a contract agreement to allow a port authority to execute enterprise zone or community reinvestment area tax abatements, with voter approval.

- *Expands, for pre- and post- 1982 port authorities, the training requirement for port authority special police officers.*

  Currently, a port authority may employ special police officers to enforce its regulations and maintain order. But at the same time, a port authority is prohibited from employing a person to work as an *armed* special police officer, security guard, or other position unless the person is duly certified as a peace officer or has completed 20 years of active duty as a peace officer. The bill would define a port authority special police officer as a "peace officer," and require peace officer training certification by the Executive Director of the Ohio Peace Office Training Commission.

  The fiscal impact of this provision would be minimal. Currently, only two port authorities contract out for their security services. According to the Peace Officer Training Council, the minimum requirement to receive a peace officer certificate is 450 hours of training. The 16-week program costs $2,695 per candidate. Annual updates involving a firearms retraining program are usually done for minimal fees, mostly covering the cost of ammunition.

- *Expands for pre- and post- 1982 port authorities, insurance procurement for employees and their families.*

  The fiscal impact of this provision would be minimal. Of the 354 port authority employees documented, 220 are municipal employees already eligible for insurance benefits, regardless of their full-time or part-time status.

- *Modifies for pre- and post- 1982 port authorities, authority of a port authority regarding the acquisition, control and disposition of real and personal property.*

  A primary function of port authorities is land management. Originally, port facilities were created to enhance docking or airfield landing services for businesses. Today, port authorities are seeking more sophisticated facilities management opportunities aimed at enhancing local economic development. (And, these economic development projects are no longer restricted to a port authority's geographic boundaries.) The use of low-cost, government bonds (industrial development bonds, industrial revenue bonds, other common bonds) as financing instruments for site improvements and construction projects requires land ownership or significant site control, such as a long-term property lease.

The bill expands current law by explicitly allowing a port authority to "accept or hold as consideration the conveyance of property or any interest therein as the board in its discretion may determine, *notwithstanding* any restrictions that apply to the investment of funds by a port authority."

Attachment 2 provides two examples of recent Controlling Board actions involving port authorities in major, non-traditional economic development projects.

Due to the unpredictable array of projects that may surface, the fiscal impact of this provision cannot be determined.

- *Modifies for pre- and post- 1982 port authorities the bonding authority of port authorities.*

Currently a port authority may, by resolution of its board of directors, issue revenue bonds to acquire, construct or develop a port authority facility. Such revenue bonds are secured by a lien on the revenues of the port authority from loan payments, rents, fees, charges and other revenues designated in the resolution.

The bill would strengthen a port authority's ability to issue "Port Authority Revenue Bonds" by enhancing the credentials of a port authority ("body corporate and politic") and by declaring that all bonds issued have the "qualities and incidents of negotiable instruments" and may be issued in coupon. In addition, the bill changes the law to allow the port authority board to collect certain "debt charges" on revenue bond income, which essentially permits a management fee to be added to the principal and interest charges of a revenue bond.

The fiscal impact of this provision is currently unclear. ORC section 4582.06 states that "the net indebtedness incurred by a port authority shall never exceed two per cent of the total value of all property within the territory comprising the authority." Yet, a port authority may issue revenue bonds beyond the limit of bond indebtedness provided by law for certain self-supporting securities (ORC section 133.07(C)). "Port Authority Revenue Bonds" would be self-supporting securities, dependent upon a defined revenue stream that would need to withstand the scrutiny of the securities market. As self-supporting securities, these bonds would be exempt from the calculation of net indebtedness.

Through several inquiries, it is clear that county-level fiscal offices do not readily track the bond indebtedness of port authorities located within their jurisdictions. One county official relies on local bond counsel (under contract) to advise on these matters when needed. Another relies on financial information provided by the Ohio Municipal Advisory Council (OMAC), a quasi-public entity that monitors local government security activity.

According to OMAC records, since 1964, the value of individual bond issuances made by Ohio port authorities ranges from $600,000 to $65.7 million. In the 1990's, a more typical bond issuance value is likely to range between $3 and $12 million. The Toledo-Lucas Port Authority uses these financing instruments with the most frequency of all port authorities: 10 of 30 bond issuances have occurred since July 1, 1990, with a combined value of over $77.2 million.

- *Eliminates for pre- and post- 1982 port authorities requirements for a port authority to submit proposals, advertise bids and other procurement procedures for accepting the best qualified bidder.*

  No information is currently available in respect to this provision.

- *Permits a pre- or post- 1982 port authority to contract with foreign countries or governments.*

  It appears that this change seeks to streamline business transactions with foreign airlines. This provision does not relate to the administration of foreign trade zone (FTZ) operations, since FTZ's are operated by U.S. Customs officials, federal regulations supercede state and local law.

- *Raises from $10,000 to $25,000 the threshold for notice and competitive bidding requirements, and provides for exceptions to the competitive bidding requirements for pre- and post- 1982 port authorities.*

  The fiscal impact of this provision is currently unknown because of the great disparity between the levels of operations of existing port authorities. The raising of the threshold for notice from $10,000 to $25,000 appears to follow recent purchasing procedure updates adopted by the state and some local governments. A minimal amount of cost savings should occur in the operations of large port authorities due to streamlined procedures.

  However, the changes impacting competitive bidding requirements, including bypassing the competitive bidding process under a set of unclear circumstances for sole source determination or project specific improvements, provide a much wider array of discretion for port authority boards than currently exists. According to calendar year 1997 financial statements filed with the Auditor of State, total operating expenses for Ohio's three largest port authorities exceeded $23.4 million (Toledo-Lucas), $7.8 million (Rickenbacker) and $4.1 million (Cleveland-Cuyahoga). Considering that employee salaries and benefits represent between eighteen and thirty percent of these costs, much of the remaining operating expenses would be subject to these new procurement guidelines.

- *Modifies investment authority of a post- 1982 port authority.*

  The fiscal impact of this provision is unknown.

- *Adds special police officers employed by a port authority to the definition of law enforcement officer.*

  Currently two port authorities hire private sector security personnel for their security needs. The bill would enable a port authority to employ its own special police officers. If private sector security officers were to become port authority special police officers, the change would require the officer to hold a valid certificate issued by the Ohio Peace Officer Training.

- *Requires port authorities to report annually to the Director of Development.*

Before April 1st of each year, every port authority must provide a detailed report regarding the status of projects and activities to the Director of Development. Currently, the only reporting required is financial statements collected by the Auditor of State.

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Attachment 1

Ohio Port Authorities
as of 3/17/1998

	Port Authority	County	Year Created	No. of Board Members	No. of Employees	Annual Operating Budget	No. of Projects CY 1997
1	Allen County Port Authority	Allen	1982	7	all volunteer	"very small"	n/a
2	Ashtabula City Port Authority	Ashtabula	1965	7	2	$84,900	1
3	Ashtabula County Port Authority	Ashtabula	1988	4	1	$198,000	3
4	Athens County Port Authority	Athens					
5	Cleveland-Cuyahoga Port Auth.	Cuyahoga	1968	9	19	$4,500,000	
6	Columbiana County Port Auth.	Columbiana	1977	5	5	$735,000	4
7	Columbus Municipal Airport Auth.	Franklin	1992	9	220	$39,428,534	17
8	Conneaut Port Authority	Ashtabula					
9	Dayton International Airport	Montgomery					8
10	Dayton Port Authority	Montgomery	not an actual port authority				
11	Fairport Harbor Port Authority	Lake					
12	Greater Cincinnati Port Authority	Hamilton	1997	10	0	$465,000	0
13	Heath-Newark-Licking Cty P. A.	Licking	1995	9	18	$4,457,000	32
14	Huron-Joint Port Authority	Erie	1966	7	0	$0	n/a
15	Jackson Township Port Authority	Stark					
16	Steubenville Port Auth. (Jefferson)	Jefferson	1996	4	0	$0	0
17	Lorain Port Authority	Lorain	1964	9	6	$6,399,562	3
18	Rickenbacker Port Authority	Franklin	1979	11		$642,496	
19	Sandusky-Seneca-Tiffin P. A.	Seneca	1989	7	0	$199,680	0
20	Stark County Port Authority	Stark	1995	5	0	$150,000	2
21	Summit County Port Authority	Summit	1993	3	0	$110,038	1
22	Toledo-Lucas County Port Auth.	Lucas	1955	13	70	$11,885,500	30
23	West Central Ohio Port Authority	Clark	1989	7	0	$115,200	0
24	Western Reserve Port Authority	Trumbull	1992	8	10	$1,200,000	5
25	Zanesville-Muskingum Cty P. A.	Muskingum	1987	5	3	$220,000	11

Attachment 2
Selected Controlling Board Requests Involving Port Authorities

Rock and Roll Hall of Fame/Cleveland-Cuyahoga County Port Authority

On February 9, 1993, the Controlling Board approved a request from the Department of Development to support the construction of a $94.6 million facility to house the Rock and Roll Hall of Fame and Museum as a component of the North Coast Harbor development. The action activated a $42 million Direct Loan Guarantee ($2.1 million annually for 20 years), which secured a portion of the annual debt service on $38.9 million in tax-exempt revenue bonds issued by the Cleveland-Cuyahoga County Port Authority.

Policy issues discussed at the time of the loan guarantee included the Rock Hall's non-profit, tax-exempt status, and the continuation of the hotel "bed" tax to secure potential funding shortfalls.

Ohio EPA/Rickenbacker Port Authority/Lazarus

On November 3, 1997, the Controlling Board approved a request from DAS Real Estate Services (representing the interest of Ohio EPA) to sublease 215,037 square feet of the Lazarus Office Complex from the Rickenbacker Port Authority. The action activated a new, 30-year lease agreement (valued at $98 million) for government office space and supported an additional $21 million in private building renovations funded by proceeds from the sale of tax-free municipal bonds issued by the port authority. The facility remains privately owned throughout the agreement.

Several policy issues surfaced during the Controlling Board's deliberations. Among them was the size of the agreement, the capability of the port authority to manage the project, and the use of tax-free financing instruments to support extensive renovation of private space *without* generating any additional economic activity. First, the request reflected the single largest leasing arrangement <u>ever</u> to house state agency office operations from a *private owner*. Critical to the structure of the deal was Rickenbacker's position as financial manager to perform several tasks: 1) to initiate the primary lease agreement with Lazarus, 2) to issue long-term, tax-free municipal bonds to pay for tenant improvements, 3) to administer the sublease with DAS Real Estate, and 4) to coordinate debt service payments. The amount of money needed to renovate the building drove the bond issue, which in turn drove the terms of the lease agreement. The cost-effectiveness of this process remained unaddressed. Second, while it had some experience managing bond issues, the port authority had no practical experience overseeing tenant improvements. With no staff expertise available, EPA's spatial needs were met through DAS specifications and DAS' existing relationship with the construction firm performing the work. And third, the long-term benefits of renovating a 1940s vintage building would remain in the private sector, without creating new private sector jobs. This lack of additional economic activity to downtown Columbus was overshadowed by the deal's short-term benefits to the state, including consolidated operations for EPA (four years in the making), cheaper rental rates for leased space and no additional debt service (to the state) for capital improvements.